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10/632,188	07/30/2003	Suzanne Davison	179222/0002	3959

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EXAMINER

ALI, SHUMAYA B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,188

Applicant(s)

DAVISON ET AL.

Examiner

Shumaya B. Ali

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 4/14/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9-11,13 and 15-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9-11,13 and 15-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: detailed action.

***Response to Arguments***

Applicant's arguments with respect to claims 1-7,9-11,13,15-29 have been considered but are moot in view of the new ground(s) of rejection.

**DETAILED ACTION**

***Claim Rejections - 35 USC 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-7,9-11,13,15-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwebel US Patent No. 6,641,264 in view of Kawashima US Patent 6,721,963 B1 and in view of Kohn et al. US Patent No. 4,709,695.**

3. **As to claim 1, Schwebel discloses** an eye protective apparatus as a treatment for dry eye syndrome (see abstract, col.5 lines 53-59) in figure 3 with a pair of lenses (40), each of said lenses maintained within a frame (28), a soft, pliable gasket (38) on a back portion of each of said frame, said gasket designed to substantially encircle and contact the orbital bone of an eye socket of the wearer (see col.4 lines 65-37 "38 can be constructed of any soft pliable, moisture impermeable material and serves to seal the juncture between frame front 28 and the face of the user."); a bridge coupling said frame (34);

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4. **With respect to claim 1, Schwebel however does not teach** “a flexible contoured strap having two end portions and a center portion, wherein said two end portions are coupled to said frames and said center portion is designed so as to maintain said apparatus on a wearer”.

**Schwebel** discloses temples (30) to secure the protective wear to a user, however teaches “temples 30 may be structured in a fashion generally similar to conventional eyeglasses or in a fashion generally similar to a goggle” (see col.4 lines 50-53). Therefore, a goggle with a strap as securing means for the protective eye wearer would be obvious to combine with the embodiment of figure 3 of Schwebel. **Kawashima**, who also teaches an eye protection device, goggles with a heat strap (see fig. Reference object 12) which attaches to the frame same way as the claimed invention (see fig.1). **Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the temples of Schwebel in view of Kawashima in order to provide a strap as an alternative securing means of the frame to the wearer.**

5. **With respect to claim 1, Schwebel additionally does not teach** “soft, pliable, curved” lenses and “soft, pliable” frame. However at the time of the invention the combination of soft pliable curved lenses and soft pliable frame used for treating dry eye syndrome by entrapping moisture within the vicinity of eye was known to one of ordinary skills in the art. **Kohn et al. teach** a protective device in figures 1-3 for eye with protective coverings (4) (equivalent to applicant’s frame) serving as a moisture chamber composed of a single piece having a transparent semi flexible plastic composition (26) (equivalent to curved lenses) which spans over (thereby teaches soft, pliable curved lens) the eye socket. Additionally teach the covering is sufficiently flexible (thereby teaches pliable frame) to allow it to conform to the shape of the

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patient's eye socket and sufficiently rigid to maintain an arched shape (see col.5 lines 55-65).

**Therefore, it would have been obvious to one of ordinary skills in the art to apply the teachings of Kawashima to the eye protective apparatus of Schwebel since both references disclose eye protective apparatus used for entrapping moisture, in order to provide "soft pliable curved lenses" for the purposes of and spanning curved lenses over the eye socket "soft, pliable frame" for the purposes of allowing it to conform to the shape of the patient's/wearer's eye socket an sufficiently rigid to maintain an arched shape.**

6. **As to claim 2, Schwebel discloses** a moisture pad (46, (see col.5 lines 10-13 "moisture reservoir 46 is similar in structure to moisture reservoir 14") adapted to be maintained between said apparatus and the eye of the wearer, said moisture pad designed and constructed to aid to increase or maintain humidity around the eyes of the wearer (see col.5 lines 3-5, col.6 lines 1-8).

7. **As to claim 3, Schwebel discloses** the apparatus of claim 2, wherein said moisture pad is formed of an endothermic or exothermic material (limitation is considered obvious over recitations in col.4 liens 1-6, 23-26, see also col.5 lines 10-13 "moisture reservoir 46 is similar in structure to moisture reservoir 14").

8. **As to claim 4, Schwebel does not disclose** the apparatus of claim 2, wherein said moisture pad is formed of a visco-elastic foam, however applicant has not establish criticalities regarding a particular type of moisture pad used in the invention. **Therefore, the pad disclosed by Schwebel is considered an equivalent structure capable of providing the similar function of a moisture pad made frame visco-elastic foam. In addition, limitation "visco-elastic foam" is considered obvious over recitation of Schwebel in col. 4 lines 1-6, 23-26 broadly disclosing wide variety of moisture pad within the scope of the invention are known,**

**therefore, choosing one type of moisture pad over another would simply be obvious matter of design preference.**

9. **As to claim 5, Schwebel discloses** wherein each of said Lenses and said frames are formed as unitarily structures (as best seen in figure 3).

10. **As to claim 6, Schwebel discloses** wherein said lenses, said frames and said bridge are formed as a unitary structure (as best seen in figure 3).

11. **As to claim 7, Schwebel does not disclose** the apparatus of claim 1, wherein said lenses and said frames are each format of flexible polyurethane, however applicant has not established criticalities regarding Lenses constructed frame polyurethanes versus other alternative lens construction material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have Lenses constructed from a flexible polyurethane or an alternative material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

12. **As to claim 9, Schwebel discloses the apparatus** wherein said Lenses are opaque (see col.4 lines 60-63).

13. **As to claim 10, Schwebel discloses** the apparatus of claim 1, wherein said Lenses are translucent (see col.4 lines 60-63).

14. **As to claim 11, Schwebel discloses** wherein said Lenses are colored (see col.4 lines 60-63).

15. **As to claim 13, Schwebel discloses** wherein said gaskets are formed of visco-elastic foam (embodiment 3 does not disclose visco-elastic foam gasket, however embodiment 1

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discloses a gasket 16 may be made from closed or open cell foam, silicon or moisture impermeable fabric, see col.4 lines 10-16. The closed/open cell foam is considered visco-elastic type material. **Therefore it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the gasket of embodiment 3 in view of embodiment 1 in order to provide a visco-elastic foam gasket for the purposes of providing commendable junction between the gasket and the skin of the user).**

16. **As to claim 15, Schwebel discloses** wherein said gaskets are formed of an endothermic or exothermic material (seal is made from either closed or open cell foam, silicon or moisture impermeable fabric. Therefore, the seal material is capable of releasing heat.

17. **As to claim 16, Schwebel discloses** wherein said gaskets are at least primarily covered with a fabric (embodiment 3 does not disclose visco-elastic foam gasket, however embodiment 1 discloses a gasket 16 may be made from closed or open cell foam, silicon or moisture impermeable fabric, see col.4 lines 10-16). The closed/open cell foam is considered visco-elastic type material. **Therefore it would have been obvious to one of ordinal skills in the art at the time the invention was made to modify the gasket of figure 3 in view of embodiment 1 in order to provide a visco-elastic foam gasket for the purposes of providing comfortable junction between the gasket and the skin of the user.**

18. **As to claim 17, Schwebel does not disclose**, however Kawashima teaches an eye protection device, goggles with a head strap (see 20) ant a central portion (see Labeled fig, attachment below) situated between the two ends are wider than the end portions of the strap. Notice, Kawashima teaches an eye protection device, goggles with a heat strap (see fig. Reference object 12) which attaches to the frame same way as the claimed invention (see fig.1).

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**Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the strap of Schwebel in view of Kawashima in order to make the ends of the straps narrower than the center portion for the purposes of better accommodating a wearer's head and further prevent slipping of the strap by providing a Larger area at the center.**

19. As to claim 18, Schwebel does not disclose wherein said strap is formed of a four-way stretch polyester band, however Kawashima teaches an eye protection device, goggles with a heat strap (see fig. Reference object 12) made of a flexible material such as rubber, plastic elastomer or elastically stretchable synthetic fiber (see col.4 Lines 17-20). Flexible strap of Kawashima is considered a four-way polyester blend since the strap is capable of stretching in an upward/downward direction along the central portion and a right or Left direction along the two end portions discussed above. Notice, Kawashima teaches an eye protection device, goggles with a heat strap (see fig. Reference object 12) which attaches to the frame same way as the claimed invention (see fig.1). **Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to modify the strap of Schwebel in view of Kawashima in order to provide a way polyester blend for the purposes of better accommodating a wearer's heads.**

20. As to claims 19-21, Schwebel discloses an eye protective apparatus as a treatment for dry eye syndrome (see abstract, col.5 lines 53-59) in figure 3 as applied for claims 1, 2, and 13 above. Limitation "cup" is same as "lens".

21. As to claims 22-23, Schwebel discloses an eye protective apparatus as a treatment for dry eye syndrome (see abstract, col.5 lines 53-59) in figure 3 as applied for claims 1,2, and 13



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above. With respect to the language of "that said apparatus can be adjusted so that the dynamic tension between the eyecups and the strap provide a comfort level associated with a maximum 50% IFD of said eyecups while the humidity proximate the eye sockets of the wearer" considered expected result of using the apparatus of Schwebel in view of Kawashima and Kohn et al.

22. **As to claim 24, Schwebel discloses** an eye protective apparatus as a treatment for dry eye syndrome (see abstract, col.5 lines 53-59) in figure 3 as applied for claims 1,2, and 13 above.

23. **As to claims 25-29, Schwebel discloses** structural limitation cited in claims 25-29, see claim rejection as cited for claims 1-3 above. Therefore, a method steps for treating dry eye conditions as cited in claims 25-29 would have been obvious result of using the apparatus of Schwebel.

### ***Conclusion***


24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 6,003,990 is cited to show soft, pliable lenses (see col.2 lines 10-11, 27-28, 35-36); and US Patent No. 2,756,631 is cited to show soft, pliable frame (see col.1 lines 18-28).

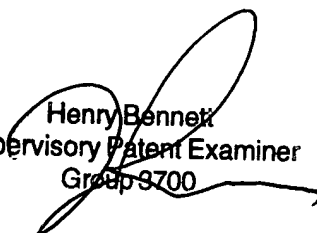
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Shumaila B Ali  
Examiner  
Art Unit 3743

  
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